



TRUSTEES FOR ALASKA

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August 3, 2022

Via email & FOIA online

Kendall Elifrits
Government Information Specialist
Bureau of Land Management
222 W. 7th Ave. #13
Anchorage, AK 99513
blm_ak_foia@blm.gov

Re: Freedom of Information Act Request

Dear Ms. Elifrits:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Trustees for Alaska requests copies of the following documents from the U.S. Bureau of Land Management (BLM) on behalf of Alaska Soles Broadband, Great Old Broads for Wilderness, Alaska Wilderness League, Conservation Lands Foundation, Northern Alaska Environmental Center, Sierra Club, Sovereign Iñupiat for a Living Arctic, and The Wilderness Society, related to the Supplemental Environmental Impact Statement (EIS) for the Willow Master Development Plan (Willow):

Any and all copies of the biological assessment for the Willow supplemental EIS transmitted to the U.S. Fish and Wildlife Service (FWS). The date range for the request is May 1, 2022 to the present.

We would prefer to receive the requested records in an electronic format, if possible. Pursuant to 5 U.S.C. § 552(a)(7)(A)–(B), we ask that you provide us with a tracking number for this request within 10 days. We also ask that you provide an estimated date by which the agency will complete action on the request.

For this request, the term “records” should be given the broadest possible interpretation and refers to, but is not limited to, any and all documents, correspondence (whether internal to the federal government or with outside parties, such as ConocoPhillips Alaska, Inc. or DOWL), emails, letters, notes, calendar entries, recordings, telephone notes and logs, text messages, chat or text messages, minutes, memoranda, comments, and files.

Time is of the essence because the requesters plan to immediately use the requested information to engage and inform the public regarding BLM’s plans to complete the supplemental EIS for Willow. We understand based on public statements by the BLM that the agency anticipates releasing its supplemental draft EIS in the second quarter of 2022.

Fee Waiver Request

We also request a waiver of any fees associated with this request. Under FOIA, fee waivers are decided on a case-by-case basis and “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Pursuant to the Department of Interior’s FOIA regulations, fee waivers are decided on a case-by-case basis and permitted when the disclosure “is in the public interest because its release is likely to contribute significantly to public understanding of the operations or activities of the government,” and the information “is not primarily in the commercial interest of the requester.” 43 C.F.R. § 2.45(a)(1)–(2).

The factors used to determine whether the information is likely to contribute to public understanding of the operations or activities are the following: (1) whether the records concern government operations or activities; (2) how disclosure is likely to contribute to public understanding of the government operations and activities; (3) how disclosure will contribute significantly to the understanding of a reasonably broad public audience; and (4) how disclosure will enhance public understanding of the subject to a significant extent. 43 C.F.R. § 2.48(a)(1)–(4). As discussed below, disclosure of the requested BLM records is in the public interest and this fee waiver request meets all of these criteria. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

1. The records concern government operations or activities.

The FOIA request seeks documents related to BLM’s National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) analyses and process for completing the biological assessment in support of the supplemental EIS for Willow. This FOIA request seeks copies of potential documents that the BLM drafted or reviewed that are relevant to BLM’s plans and process to prepare the biological assessment. The biological assessment for this permitting process is a government activity and BLM carried out government operations and activities by working with the Fish and Wildlife Service to prepare and transmit the biological assessment. Thus, this request concerns both government operations and activities potentially authorizing the use of federal public lands, and this factor is satisfied.

2. Disclosure is likely to contribute to public understanding of the government’s operations and activities.

The contents of the record will provide meaningful information to the public regarding BLM’s permit processing and compliance with the ESA. 43 C.F.R. § 2.48(a)(2)(i). The requested documents will provide the public with insight into the government’s, and specifically the BLM and FWS’s, activities, processes, and decision

making. There are many interested parties concerned about the construction of this massive project proposed in an environmentally sensitive area of the Arctic and in how the federal agencies intend to comply with both the ESA and NEPA during the supplemental EIS process. The scale of this project and the potential for impacts to ESA-listed species make BLM's process a matter of significant public interest. It is important for the public to have the opportunity to review how BLM intends to consult with FWS as a biological assessment is prepared. As the agency tasked with protection of public lands and with analyzing Willow's impacts, information on BLM's process to consult with agencies under the ESA is particularly important for the public to have access to and understand. The requested records relate directly to the BLM's consultation with FWS and the preparation of a biological assessment and the associated timelines and scope of impacts of the project. The requested information will shed light on the project and this ESA process.

Disclosure will also contribute to the understanding of a reasonably broad audience and not just to Groups' understanding. 43 C.F.R. § 2.48(a)(2)(iii). Groups are nonprofit organizations that work to preserve our nation's rich natural legacy through conservation and public engagement efforts, working in partnership with local communities, businesses, and volunteers. The requested documents will be shared with the public. Groups have the qualifications and expertise to evaluate and disclose the information in a manner that will inform a reasonably broad audience of persons interested in the subject. 43 C.F.R. §(a)(2)(iv). Groups anticipate weighing in on and educating the public on future decisions regarding Willow and management of the National Petroleum Reserve-Alaska (Reserve). Groups can and will disseminate the requested information to a broad audience that includes local and national conservation groups, rural Native villages, community and citizen groups, statewide coalitions, hunting and fishing groups, and individual Alaskans. The information will be shared through various means, including newsletters, reports, articles, electronic action alerts, telephone calls, in-person meetings, and other formal and informal print, digital, and oral communications. 43 C.F.R. § 2.48(a)(2)(v). Therefore, disclosure will contribute significantly to public understanding of government operations and this factor is satisfied.

3. Disclosure will contribute significantly to the public's understanding.

The information being requested is new and not already available to the public. 43 C.F.R. § 2.48(a)(3)(i). Access to documents regarding BLM's and FWS consultation process will provide new substantive information, potentially including information on FWS's consideration of impacts, alternatives, mitigation measures, and other important considerations under the ESA, as well as the timeline for FWS's preparation of the biological assessment. The information would help the public to understand the process to prepare the Willow supplemental EIS under NEPA and the ESA as well as BLM's process to comply with federal laws. 43 C.F.R. § 2.48(a)(3)(ii). Therefore, disclosure will contribute significantly to the understanding of a reasonably broad public audience, and this factor is satisfied.

4. Disclosure will enhance public understanding of the subject to a significant extent.

Disclosure will significantly contribute to public understanding of the Willow project, and what information and input the BLM provided to FWS regarding the scope of the supplemental EIS and process to complete it. The information should provide relevant substantive information, including technical information pertaining to Willow, potential alternatives, mitigation measures, and other ESA issues. As described above, Groups will disseminate the requested information to the public through a variety of communication methods. Dissemination of the requested information will significantly increase public understanding about the Willow proposal. Therefore, disclosure will significantly contribute to public understanding of the subject and this factor is satisfied.

5. Groups have no commercial interest in the disclosure of the information.

Disclosure of the requested records is not in Groups' commercial interest. 43 C.F.R. § 2.45(a)(2), 2.48(b). Groups have no primary or secondary commercial interest in the dissemination of the requested information. Groups are nonprofit, public interest organizations that educate the public and work in partnership with diverse individuals and groups interested in Alaska's environmental policy issues. As described above, the requested information will be disseminated to educate the public and to further the public interest in environmental subjects, and will not be used for commercial purposes. Thus, Groups have no commercial interest that would be furthered by disclosure and this factor is satisfied.

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Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. We also note that many/all of the groups requesting these documents have received fee waivers under FOIA. However, if the BLM determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees to produce the FOIA request.

We also request that BLM respond to this request within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

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If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 433-2011 or by e-mail at bpsarianos@trustees.org.

Thank you for your prompt attention to this request.

Sincerely,

s/ Bridget Psarianos
Staff Attorney
Trustees for Alaska

CC:

Stephanie Rice
Natural Resources Specialist
BLM Alaska State Office
srice@blm.gov